IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

Bail Appl..No. 5674 of 2007()

: PETITIONER

T.HARIHARAN,AGED 55 YEARS,
S/O.THANKAPPAN NAIR, "RAJASREE" FORT,
TRIVANDRUM.

BY ADV. SRI.MANJERI SUNDERRAJ
SRI.B.PREMNATH (E)

RESPONDENTS:
---

1. STATION HOUSE OFFICER,
NANMARA POLICE STATION,NANMARA, PALAKKAD.

2. THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 25/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 5674 OF 2007

Dated this the 25th day of September, 2007

ORDER

Application for anticipatory bail. The petitioner is the 5th accused. He faces allegations in a crime registered, inter alia, under Sec.468 of the IPC. Investigation is in progress. The petitioner apprehends imminent arrest. The crux of the allegations raised against the accused persons is that the 1st accused had forged a Power-of-Attorney in his favour. That Power-of-Attorney purports to be the one executed by a Non Resident Indian who has huge deposits in a bank. The forged Power-of-Attorney is executed before a Notary to make it appear that the account holder has appointed the 1st accused as his Attorney to operate his account to avail loans from such account. Misutilizing the said forged Power-of-Attorney, huge amounts were availed as loan from the deposit account of the

account holder. Such amounts withdrawn were utilized and made use of by the conspirators who allegedly entered into a conspiracy to commit the crime. The petitioner is alleged to be one of the conspirators. The ill-gotten amount has been shared with the petitioner also, it is alleged. Investigation is in progress. The 1st accused has been arrested. After some period in custody, he has been directed to be released on bail with effect from 24/9/07.

2. According to the petitioner, he is absolutely innocent. He is not a party to any conspiracy. An attempt is made to explain away the receipt of the cheque from the 1st accused by the petitioner. The petitioner shall co-operate with the Investigators. His arrest and detention is unnecessary. Powers under Sec.438 of the Cr.P.C. may be invoked to spare the petitioner of the undeserved trauma of arrest and incarceration, it is prayed.

3. The learned Public Prosecutor opposes the application vehemently. The petitioner is the 5th accused. Available indications strongly raise suspicion against the involvement of the petitioner as one of the conspirators. The petitioner have to be arrested and interrogated. Custodial interrogation of the petitioner is absolutely necessary for a proper resolution of the

crime. The police have to cross check on several vital aspects. Detailed interrogation of the petitioner appears to be unavoidable in a case like this. The petitioner may not be permitted to arm himself with an order of anticipatory bail. The grant of anticipatory bail to the petitioner is likely to seriously hamper the further course of investigation. The petitioner may be directed to surrender before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the normal course, prays the learned Public Prosecutor.

4. I have considered all the relevant inputs. Considering the peculiar nature of the facts and circumstances of this case, the learned Public Prosecutor was directed to place the Case Diary for the perusal of this Court. I have perused the same. At the early stage of the investigation, I shall scrupulously avoid any detailed discussions on the acceptability of the allegations of complicity of the petitioner or the credibility of the data collected. Suffice it to say that, on an anxious consideration of all the relevant inputs, I find no features which would justify the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C. in favour of the petitioner. I agree with the learned Public Prosecutor that the petitioner must surrender before the Investigating Officer or learned Magistrate and co-

operate with the Investigators for making further progress in the resolution of the crime. It is not necessary to permit the petitioner to arm himself with an order of anticipatory bail at this stage.

5. In the result, this bail application is dismissed; but with the observation that if the petitioner surrenders before the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R. BASANT, JUDGE)

Nan/